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JAMES D. M.

United States Supreme Court.

October Term, 1930.

No. 317

GIOVANNI LUZZATO and JOSEPH G. LUZZATO, Copartners
trading under the firm name of GIOVANNI LUZZATO & SON
Appellants

against

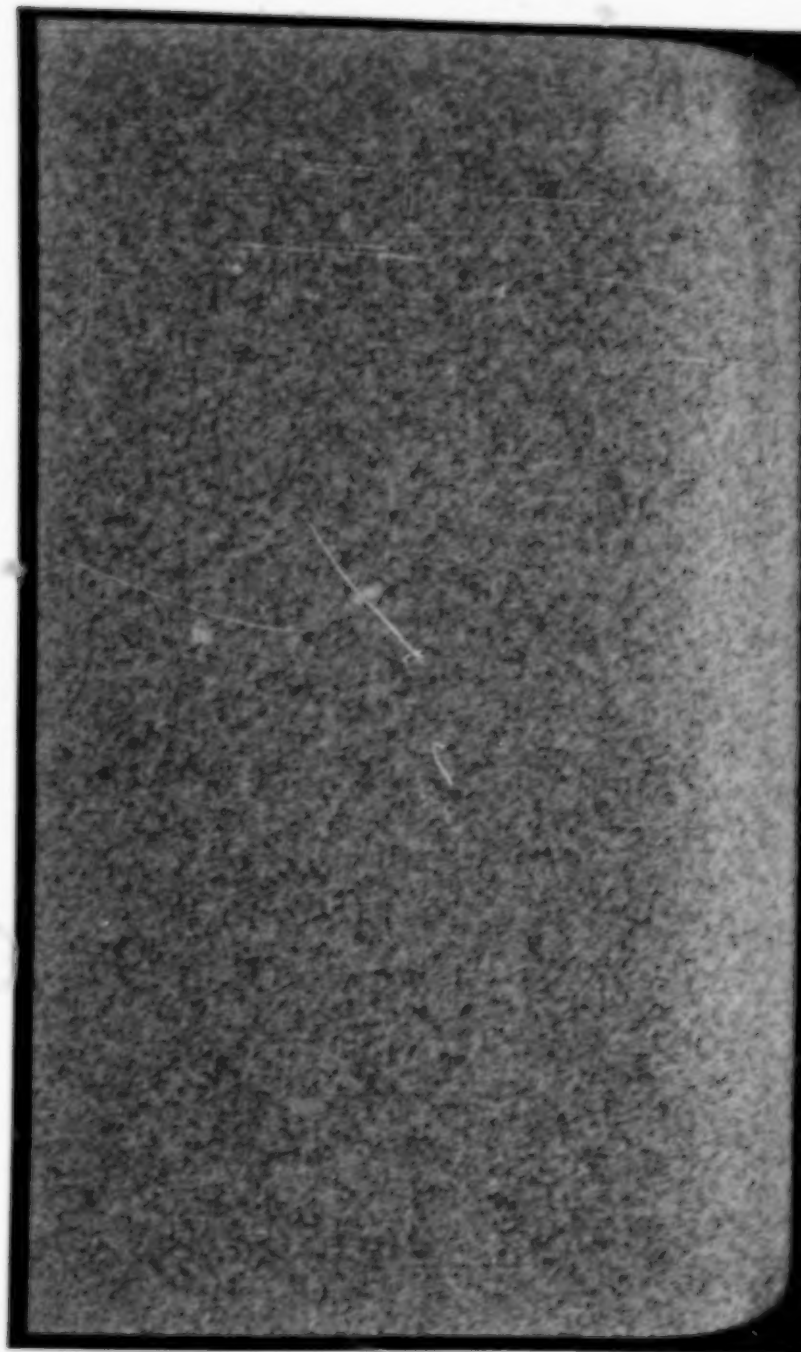
Steamship PESARO.

Appellee

MOTION BY THE APPELLEE TO ADVANCE.

JOHN H. WOOLLEY,

Counsel for the Steamship PESARO, appearing
SPECIALLY FOR THE PURPOSE OF CLAIMING
PRIORITY AND FOR NO OTHER PURPOSE



UNITED STATES SUPREME COURT.

GIOVANNI LUZZATO and JOSEPH G.
LUZZATO, copartners, trading
under the firm name of GIO-
VANNI LUZZATO & SON,

Appellants,

against

STEAMSHIP PERARD,

Appellee.

OCTOBER TERM, 1920
No. 317

Sirs:

PLEASE TAKE NOTICE that on Monday, November 22nd, 1920, at the opening of Court on that day, or as soon thereafter as counsel can be heard, we shall make a motion on the annexed affidavit, before the Supreme Court of the United States, at the Capitol, Washington, D. C., that the above entitled case be advanced for hearing so that it can be argued at the same time as the case of Giuseppe Cavallaro, Petitioner, vs. Steamship Carlo Poma, her engines, etc.; Kingdom of Italy, Claimant, which is No. 167 on the Docket of the October, 1920, Term of the Supreme Court of the United States, and we shall then and there also ask the Court to grant the petitioner

such other or further relief in the premises as may be just.

Dated, November 16, 1920.

Yours, etc.,

JOHN M. WOOLSEY,
Counsel for the Steamship *Pesaro*,
appearing specially for the purpose of claiming immunity and for no other purpose.

To:

MESSRS. HARRINGTON, BIGHAM & ENGLAR,
Proctors for Appellants,
64 Wall Street,
New York City.

UNITED STATES SUPREME COURT.

GIOVANNI LUZZATO and JOSEPH G.
LUZZATO, copartners, trading
under the firm name of GIO-
VANNI LUZZATO & SON,

Appellants,

against

STEAMSHIP PESARO.

OCTOBER TERM, 1920

No. 317

STATE OF NEW YORK, }
County of New York, } ss.:

JOHN M. WOOLSEY, being duly sworn, says:

1. I am a member of the firm of Kirlin, Woolsey, Campbell, Hickox & Keating, proctors appearing specially for the steamship *Pesaro*, for the purpose of claiming immunity and for no other purpose.

I am a member of the bar of the State of New York and of the bar of this Honorable Court.

I have appeared specially in this Court on behalf of the Italian Government for the purpose of claiming immunity of the Italian steamship *Pesaro* and for no other purpose.

2. A libel was filed by the firm of Giovanni Luzzato & Son against the steamship *Pesaro* in the United States District Court for the Southern District of New York,

on January 5, 1920, to recover for alleged damage to a consignment of olive oil. *Pesaro Record*, page 1, folios 1 to 4.

3. In pursuance of the usual monition *in rem* the Italian steamship *Pesaro* was arrested by the United States Marshal for the Southern District of New York. *Pesaro Record*, page 3, folios 6-7.

On January 20, 1920, the Ambassador of the Kingdom of Italy filed a suggestion of immunity made at Washington, January 15, 1920, that the steamship *Pesaro* was at the time owned by the Government of the Kingdom of Italy and in possession of the Government of the Kingdom of Italy, in the person of a master employed and paid by said Government, and was wholly manned and operated by a master, officers, engineers and crew employed and paid by said Government. *Pesaro Record*, page 6, folios 11-12.

The said suggestion was accompanied by the certificate of the Secretary of State, the Honorable Robert Lansing, done at Washington, on the 16th day of January, 1920, certifying that the Italian Ambassador, Honorable Camillo Romano Avezzana, was duly accredited to the United States Government as Envoy Extraordinary and Minister Plenipotentiary of Italy. *Pesaro Record*, page 5, folio 10.

4. In pursuance of this suggestion the vessel was discharged from her arrest and attachment by the Honorable John C. Knox, United States District Judge, who stated that he felt bound to do so under authority of *The Carlo Poma*, 259 Fed. 369 (C. C. A., 2nd Circuit, May

14, 1919), and an order was entered accordingly by said Judge. *Pesaro Record*, page 12, folios 24 to 26. Cf. *Carlo Poma Record*, page 8, folios 16-20.

5. Thereafter the libelant took an appeal direct to this Court from the United States District Court for the Southern District of New York.

This appeal was allowed on April 3, 1920, by Judge Knox, and at the same time he issued and filed a certificate, in alleged conformity with Section 238 of the Act entitled, "An Act to Modify, Revise and Amend the Laws Relating to the Judiciary," approved March 3rd, 1911, Chapter 231, as amended, that he released the vessel on the ground that the United States District Court, sitting as a Court of Admiralty, had no jurisdiction over the steamship *Pesaro* because the vessel was the property and in the possession of a foreign Government. *Pesaro Record*, page 17, folios 36-37. Cf. *Carlo Poma Record*, page 3, folios 6-7.

6. It will be seen, therefore, that whilst the procedure by which this case has reached this Court differs from the procedure by which the case of the *Carlo Poma* reached this Court, the latter having been taken up by *certiorari* from the United States Circuit Court of Appeals for the Second Circuit, the questions involved are in fact the same and have been found by the Judge who decided the present case to be the same.

7. The questions of law involved, other than the question of the propriety of an appeal direct to this Court from the District Court in an immunity case, is the same

in both cases because the question involved in both cases is

A. Whether a certificate by a duly accredited foreign Ambassador is conclusive evidence as to whether a vessel is a public or private vessel and, consequently, as to whether she is amenable to the process of our admiralty courts or not, and

B. Whether the courts should receive such certificates when offered by foreign Embassies direct.

8. These questions are of great practical importance for the reason that there are many cases pending throughout the United States District Courts in Admiralty in this country in which these or similar questions regarding Ambassadorial certificates are involved, and it is of the utmost importance to the orderly procedure of litigation in the Lower Federal Courts that these questions should be finally disposed of by a decision of this Court.

9. Your deponent has been concerned in many cases in which these questions have been involved and the lower Courts have usually received the certificate, although in one or two instances the Courts have refused to receive them.

10. The reasons for requesting that this case should be advanced, to be argued at the same time as the *Carlo Poma*, are—

A. That the questions of immunity and practice involved in the two cases are identical,

B. That there has not, so far as your deponent

is aware, been any decision by this Court which deals with the precise questions here involved,

c. That owing to the gravity, novelty and importance of the questions involved and the fact that your deponent is involved in many cases in which the same questions are involved, he is anxious to have an opportunity to argue these questions at the time when the case of the *Carlo Poma* is argued.

11. Counsel for the appellants in this case, who are also counsel for the petitioners in the *Carlo Poma* case, have approved this application, as will be seen by their certificate at the end hereof.

WHEREFORE, it is submitted, that it is appropriate that this case should be argued at the same time as the argument of the case of *The Carlo Poma*, No. 167 of the October Term, 1920, and it is prayed that this Court may so order.

JOHN M. WOOLSEY.

Sworn to before me this 18th)
day of November, 1920.)

HARRISON LILLIBRIDGE,

Notary Public,

New York County.

New York County Clerk No. 393

New York Register No. 1418

Commission expires March 30, 1921

CERTIFICATE.

We do hereby certify that we have examined the foregoing motion, and, in our opinion, it is well founded and entitled to the favorable consideration of this Court.

D. ROGER ENGLAR,

OSCAR R. HOUSTON,

Of counsel for Appellants
herein and for Petitioners in No. 167, *The Carlo Poma*.